

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7011 1570 0003 0363 3772

October 10, 2013

Michael J. Biscone, Esq.
Biscone Law Firm
151 Main Street
Ravena, NY 12143

Re: Order on Consent
Village of Ravena
R4-2011-1212-156

Dear Mr. Biscone:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$3,150 of the civil penalty pursuant to Paragraph I.

Sincerely,

Jill T. Phillips
Assistant Regional Attorney
Region 4

Enclosure

cc: C. Buetow
A. Dzierwa

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation
Law ("ECL") Article 17

ORDER ON
CONSENT

-By-

File No.
R4-2011-1212-156

Village of Ravena

RESPONDENT

WHEREAS:

Jurisdiction

1. The Department has jurisdiction in all matters pertaining to the protection of the water quality of the State pursuant to ECL Article 17.
2. Respondent, Village of Ravena, owns and operates the Van Hoesen Street Sanitary Sewer Overflow Retention Facility ("ORF"). The ORF discharges pursuant to a State Pollutant Discharge Elimination System ("SPDES") permit (#NY0102512). The permit does not allow for sanitary sewer overflows ("SSOs").
3. Respondent is required under its SPDES permit to submit discharge monitoring reports ("DMRs") to the Department on a monthly basis.
4. Respondent's SPDES permit requires it to submit an ORF Mixing Zone Analysis report by June 1, 2011.
5. Respondent's SPDES permit requires it to submit a Capacity, Management, Operational and Maintenance ("CMOM") plan by September 1, 2011.
6. Respondent's SPDES permit requires it to submit a No Feasible Alternative Analysis by September 1, 2011.
7. Respondent's SPDES permit requires it to install a high level alarm by May 1, 2011 to notify facility staff when the ORF is about to discharge.
8. Respondent's SPDES permit and the Hudson River Estuary Action Plan requires it to install a disinfection system by May 1, 2011.
9. Respondent is subject to Order on Consent R4-2007-0925-126 (effective on November 17, 2007) ("2007 Order") which contained a Schedule of Compliance ("Schedule").

10. Item 5 of the Schedule requires Respondent to submit to the Department semi-annual progress reports by January 1 and July 1 of each year.

11. ECL Section 17-0511 states that “the use of existing or new outlets or point sources, which discharge sewage, industrial waste or other wastes into waters of this state is prohibited unless such use is in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by the department pursuant to this article.”

Facts

12. Department staff have reviewed its records and determined that Respondent has not submitted the semi-annual progress reports for July 1, 2010, January 1, 2011 and July 1, 2011.

13. Respondent’s failure to submit the semi-annual progress reports for July 1, 2010, January 1, 2011 and July 1, 2011 are violations of the 2007 Order.

14. Department staff have reviewed its records and determined that Respondent has not submitted an ORF Mixing Zone Analysis.

15. Respondent’s failure to submit an ORF Mixing Zone Analysis report by June 1, 2011 is a violation of its SPDES permit.

16. Department staff have reviewed its records and determined that Respondent has not submitted a CMOM plan.

17. Respondent’s failure to submit a CMOM plan by September 1, 2011 is a violation of its SPDES permit.

18. Department staff have reviewed its records and determined that Respondent has not submitted a No Feasible Alternative Analysis.

19. Respondent’s failure to submit a No Feasible Alternative Analysis by September 1, 2011 is a violation of its SPDES permit.

20. On or about December 15, 2011, Department staff confirmed that Respondent did not install a high level alarm at the ORF.

22. Respondent’s failure to install a high level alarm by May 1, 2011 to notify facility staff when the ORF is about to discharge is a violation of its SPDES permit.

23. On or about December 15, 2011, Department staff confirmed that Respondent did not install a disinfection system at the ORF.

24. Respondent’s failure to install a disinfection system by May 1, 2011 is a violation of its SPDES permit and the Hudson River Estuary Action Plan.

25. The following SSOs were reported by Respondent for 2010 – 2011:

Date	Sanitary Sewer Overflow Location
January 25, 2010	Orchard Ave, Russell Ave, Railroad Ave
Nov 1, 2010	Orchard Ave, Russell Ave, Central Ave
Dec 1, 2010	Russell Ave
March 6, 2011	Orchard Ave and Russell Ave
March 11, 2011	Orchard Ave, Russell Ave, Railroad Ave, Central Ave
May 20, 2011	Orchard Ave and Russell Ave
August 28, 2011	Orchard Ave, Russell Ave, Railroad Ave, Central Ave, VanHoesen St, Mountain Rd, Main St. (Hurricane Irene)
Sept 7, 2011	Orchard Ave, Russell Ave, Main St (Tropical Storm Lee)
Sept 8, 2011	Main St

26. The SSOs cited in Paragraph 25 above are violations of ECL Section 17-0511 and Respondent’s SPDES permit.

27. A review of Respondent’s DMRs by Department staff revealed the following SPDES permit effluent limit violations for 2010 – July 2013:

Date	Permit Violations
8/31/2011	Fecal Coliform (>20,000 / mL); Permit Limits Violated: monthly 200 / mL; 7 day 400 / mL
9/30/2011	Fecal Coliform (>4,000 / mL); Permit Limits Violated: monthly 200 / mL; 7 day 400 / mL
6/30/2013	Fecal Coliform (>4,000 / mL); Permit Limits Violated: monthly 200 / mL; 7 day 400 / mL
1/31/2010	Visual Solids observed 1 day; Permit Limit Violated: no visual solids
2/28/2010	Visual Solids observed 1 day; Permit Limit Violated: no visual solids
10/31/2010	Visual Solids observed 1 day; Permit Limit Violated: no visual solids
3/31/2011	Visual Solids observed 2 day; Permit Limit Violated: no visual solids
8/31/2011	Visual Solids observed 2 day; Permit Limit Violated: no visual solids
9/30/2011	Visual Solids observed 1 day; Permit Limit Violated: no visual solids
12/31/2011	Visual Solids observed 1 day; Permit Limit Violated: no visual solids
6/30/2013	Visual Solids observed 1 day; Permit Limit Violated: no visual solids

28. The SPDES permit effluent limit violations cited in Paragraph 27 above are violations of ECL Section 17-0511 and Respondent’s SPDES permit.

Civil Penalty

29. ECL Section 71-1929 provides that any person who violates any provision of Titles 1 through 11 inclusive and title 19 of Article 17 of the ECL or any rule or regulation, order or

determination of the Commissioner promulgated thereunder shall be liable for a civil penalty of up to thirty seven thousand five dollars (\$37,500). Injunctive relief is also available.

Waiver of Hearing

30. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law and has consented to the issuing and entering of this Order and agrees to be bound by its terms, provisions and conditions contained within the Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. In respect of the aforesaid violations, a civil penalty in the amount of FIFTEEN THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$15,750) is hereby assessed against the Respondent. THREE THOUSAND ONE HUNDRED FIFTY DOLLARS (\$3,150) of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

The balance of the penalty, TWELVE THOUSAND SIX HUNDRED DOLLARS (\$12,600), is suspended and shall not be payable, provided that Respondent fully complies with the requirements of this Order in a timely fashion. In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

V. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

Regional Water Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

X. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its agents, servants, employees, successors and assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

XI. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons

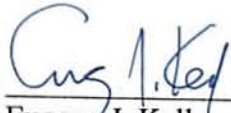
for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations contained in this Order.

DATED: 10/10, 2013
Rotterdam, New York

Joseph Martens
Commissioner
New York State Department of
Environmental Conservation

BY: 

Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT
Village of Ravena

Respondent hereby consents to the issuing and entering of this Order, waives its right to a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

BY: John T. Bruno
TITLE: MAYOR
DATE: 10/2/13

STATE OF NEW YORK)
)ss.:
COUNTY OF)

On the 7th day of October in the year 2013 before me, the undersigned, a Notary Public in and for the State, personally appeared John T. Bruno, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Sharon E. Dewsbury
Notary Public
SHARON E. DEWSBURY
Notary Public, State of New York
No. 4750053
Qualified in Albany County
Commission Expires May 31, 20 15

Schedule of Compliance

1. Within 30 days of the effective date of this Order, Respondent shall submit to the Department documentation showing that Respondent and the Town of Coeymans have formed a joint committee for the purpose of conducting a joint municipal study (“Study”) on Respondent’s and the Town of Coeymans’ sanitary sewer systems. The study shall be performed by a Professional Engineer licensed in the State of New York. The study shall address at a minimum the evaluation of the future use of the Van Hoesen Overflow Retention Facility (ORF). The study shall determine if the ORF should: continue to be used as designed; be used to provide flow equalization with no discharge; or be completely eliminated. The study shall also determine the effects of the change in the use of the ORF on the downstream sewer system and what changes will be necessary to convey sewage and not cause sanitary sewer overflows. The study shall be completed by October 1, 2013. A report prepared by a Professional Engineer licensed in the State of New York on the Study’s findings and recommendations for improvements to the sanitary sewer system shall be submitted to the Department for review and approval within 30 days of the completion of the study. All improvements to the sanitary sewer system shall be completed by October 1, 2016.

2. If the joint committee is formed, but the conclusion of the study is to continue to use the ORF, Respondent shall submit the following items to the Department, in accordance with its SPDES Permit:
 1. by June 1, 2014 - CMOM Plan that complies with the requirements as specified in the SPDES permit;
 2. by August 1, 2014 - ORF Mixing zone analysis;
 3. by June 1, 2014 - No Feasible Alternative Analysis;
 4. by December 1, 2013 - Upgrades to the ORF, including installation of disinfection equipment, high level alarm, installation of a new composite sampler that can measure discharge volume, and connecting the discharge to the new outfall line.

3. Within 30 days of the effective date of this Order, Respondent shall implement an interim system to disinfect discharges from the ORF and shall operate such system until all improvements to the sanitary sewer system are completed.

4. Within 120 days of the effective date of this order, Respondent shall submit to the Department for review and approval an SSO Abatement and Elimination Plan prepared by a professional engineer, licensed in the State of New York. The plan must, at a minimum, address removal of I/I to the maximum extent practicable to eliminate sanitary sewer over flows. The SSO Abatement and Elimination Plan shall be developed in accordance with the Department’s Guidelines for Sanitary Sewer Overflow Abatement Analysis, dated April 24, 2009 (see Attachment 1).

5. No sewer connections, sewer extensions, or increases in flow shall be made to the Village’s sanitary sewer collection system until satisfactory completion of this Schedule of Compliance, except as follows:

- a. Continued Relief Based on I/I Work [After Department approval issued under paragraph 6.]: Upon Department approval of an SSO Abatement and Elimination Plan, sewer connections, sewer extensions, or increases in flow may be considered based on I/I reduction projects. Application in writing for such relief shall be made to the Regional Water Engineer. Approvals under this subparagraph will only be considered if progress on the approved SSO Abatement and Elimination Plan is meeting all approved schedules pursuant to this Schedule of Compliance, paragraph 1. Such application shall include, at a minimum, (I) a description of the quantity and type of wastewater to be introduced (estimates of new wastewater quantity shall be based on the expected hydraulic loading rates provided in the DEC Design Standards for Wastewater Treatment Works, 1988); (II) an assessment of the capacity of the existing system to accept the additional flow without overloading the WWTP or collection system; (III) an assessment of the I/I removed by the projects completed under this Schedule of Compliance, paragraph 1); and (IV) an assessment of the criteria in 6 NYCRR Part 750-2.9 (c) (1), (2), and (3) using data from the previous 12-months.
 - b. Sewer connections, sewer extensions, or increases in flow not covered by subparagraph (A) or (B) above, to eliminate existing potential public health nuisances or hazards will be allowed. Application in writing for such relief shall be made to the Regional Water Engineer and must include written concurrence in regard to the existing potential public health nuisance or hazard from the County Health Department.
6. Compliance with the terms and conditions of this Schedule of Compliance shall not be a defense to subsequent violations of the SPDES permit.